

*Magistrate*

(1) 182

C H A P. I.

Of Magistracy. *K.*

I.  
**R**ELATION is nothing else but that State of Mutual Respect and Reference, which one Thing or Person has to another.

II.  
Such are the Relations of Father and Son, Husband and Wife, Master and Servant, Magistrate and Subject.

III.  
The Relations of a Father, Husband and Master, are really distinct and different; that is, one of them is not the other; For he may be any one of these who is none of the rest.

IV.  
This distinction proceeds from the different Reasons, upon which these Relations are Founded.

V.  
The Reason or Foundation, from whence arises the Relation of a Father, is from having Begotten his Son, who may as properly call every Old Man he meets his Father, as any other Person whatsoever, excepting him only who Begat him.

VI.  
The Relation of an Husband and Wife is founded in VVedlock, whereby they mutually consent to become one Flesh.

VII.  
The Relation of a Master is founded in that Right and Title which he has to the Possession, or Service, of his Slave or Servant.

VIII.  
In these Relations, the Name of Father, Husband, and Master, imply Sovereignty and Superiority, which varies notwithstanding, and is more or less Absolute, according to the Foundation of these several Relations.

IX.  
The Superiority of a Father is founded in that Power, Priority, and Dignity of Nature, which a Cause hath over its Effect.

X.  
The distance is not so great in VVedlock, but the Superiority of the Husband over the Wife, is like that of the Right Hand over the Left in the same Body.

XI.  
The Superiority of a Master, is an absolute Dominion over his Slave, a Limited and Conditionate Command over his Servant.

XII.  
The Titles of *Pater Patrie*, and *Sponsus Regni*, Father of the Country, and Husband of the Realm, are Metaphors and Improper Speeches: For no Prince ever Begat a whole Country of Subjects; nor can a Kingdom more properly be said to be Married, than the City of *Venice* is to the *Adriatique Gulph*.

XIII.  
And to shew further, that Magistracy is not Paternal Authority, nor Monarchy founded in Fatherhood; it is undeniably plain, that a Son may be the Natural Sovereign Lord of his own Father, as *Henry* the second had been of *Jeffrey Plantagenet*, if he had been an *Englishman*; which, they say, *Henry* the Seventh did not Love to think of, when his Sons grew up to Years. And this Case alone is an Eternal Confutation of the Patriarchate.

XIV.  
Neither is Magistracy a Marital Power, for the Husband may be the Obedient Subject of his own Wife, as *Philip* was of *Queen Mary*.

XV.  
Nor is it that Dominion which a Master has over his Slave, for then a Prince might Lawfully Sell all his Subjects, like so many Head of Cattle, and make Money of his whole stock when ever he pleases, as a Patron of *Algiers* does.

XVI.  
Neither is the Relation of Prince and Subject the same with that of a Master and Hired Servant, for he does not Hire them, but, as *St. Paul* saith, *They pay him Tribute*, in consideration of his continual Attendance and Employment for the Publick Good.

XVII.  
That publick Office and Employment is the Foundation of the Relation of King and Subject, as many other Relations are likewise Founded upon other Functions and Administrations. Such as *Guardian* and *Ward*, &c.

(a) *Prout*  
*Regalis Officii*  
*exposita utilitas*  
 (b) *sicme le*  
*profit de Office*  
*Demande.*  
*The Kingly or*  
*Regal Office of*  
*this Realm*  
*jo. Mar. Sess.*  
*3. Cap. 1.*

The Office of a King is set down at large in the XVII. Chap. of the Laws of King Edward the Confessor, to which the succeeding Kings have been sworn at their Coronation: And it is affirmed in the Preambles of the Statutes of (a) *Marlbridge*, and of the statute of *Quoniam*, made at (b) *Gloucester*, That the Calling of Parliaments to make Laws for the better Estate of the Realm, and the more full Administration of Justice, *Belongeth to the Office of a King*. But the fullest account of it in few words, is in Chancellor *Fortescue*, Chap. XIII. which Passage is quoted in *Calvin's Case*, *Coke VII. Rep. Fol. 5* *Ad Tutelam namque Legis Subditorum, ac eorum Corporum, & bonorum, Rex huiusmodi erectus est, & ad hanc potestatem a populo effluxam ipse habet, quo ei non licet potestate alia suo populo Dominari.* For such a King (*That is of every Political Kingdom, as this is*) is made and ordained for the Defence or Guardianship of the Law of his Subjects, and of their Bodies and Goods, whereunto he receiveth power of his People, so that he cannot Govern his People by any other power.

*Corollary i.* A Bargain's, a Bargain.

2. A Popish Guardian of Protestant Laws is such an Incongruity, and he is as Unfit for that Office, as Antichrist is to be Christ's Vicar.

## C H A P. II. Of Prerogatives by Divine Right.

### I.

Government is not matter of Revelation; if it were, then those Nations that wanted Scripture, must have been without Government; whereas Scripture it self says, That Government is *The Ordinance of Man*, and of *Humane Extraction*. And King *Charles the First* says, of this Government in particular, *That it was Moulded by the Wisdom and Experience of the People.* *Ans. to XIX. Prop.*

### II.

All just Governments are highly Beneficial to Mankind, and are of God, the Author of all Good; they are his *Ordinances* and *Institutions*, *Rom. 13. 1, 2.*

### III.

Plowing and Sowing, and the whole business of preparing Bread-Corn, is absolutely necessary to the subsistence of Mankind; *This also cometh forth from the Lord of Hosts, who is wonderful in Counsel, and excellent in Working, Isa. 28. from 23. to 29 Verse.*

### IV.

*Wisdom saith, Counsel is mine, and sound Wisdom; I am Understanding, I have strength: By me Kings Reign, and Princes decree Justice: By me Princes Rule, and Nobles, even all the Judges of the Earth, Prov. 8. 14.*

### V.

The Prophet, speaking of the Plowman, saith, *His God doth instruct him to discretion, and doth teach him, Isa. 28. 26.*

### VI.

Scripture neither gives nor takes away Mens Civil Rights, but leaves them as it found them, and (as our Saviour said of himself) is no divider of Inheritances.

### VII.

Civil Authority is a Civil Right.

### VIII.

The Law of *England* gives the King his Title to the Crown. For, where is it said in Scripture, That such a Person or Family by Name shall enjoy it? And the same Law of *England* which has made him King, has made him King according to the *English* Laws, and not otherwise.

### IX.

The King of *England* has no more Right to set up a *French* Government, than the *French* King has to be King of *England*, which is none at all.

### X.

*Render unto Caesar the things which are Caesars*; neither makes a *Caesar*, nor tells who *Caesar* is, nor what belongs to him; but only requires Men to be just, in giving him those supposed Rights, which the Laws have determined to be his.

### XI.

The Scripture supposes Property, when it forbids Stealing; it supposes Mens Lands to be already Butted and Bounded, when it forbids removing the ancient Land marks: And as it is impossible for any Man to prove what Estate he has by Scripture, or to find a Terrier of his Lands there; so it is a vain thing to look for Statutes of Prerogative in Scripture.

### XII.

If *Mishpat Hammelech*, the manner of the King, *1 Sam. 8. 11.* be a statute of Prerogative, and prove all those particulars to be the Right of the King, then *Mishpat Hacon-*  
*hanim*

*banim* the Priest's custom of sacrilegious Rapine, Chap. 2. 13. proves that to be the Right of the Priests, the same word being used in both places.

## XIII.

It is the Resolution of all the Judges of England, that even the known and undoubted Prerogatives of the Jewish Kings, do not belong to our Kings, and that it is an absurd and impudent Thing to affirm they do. *Coke 11 Rep. p. 63. Mich. 5. Jac.* "Note, upon Sunday the Tenth of November, in this same Term, the King, upon Complaint made to him by *Bancroft*, Archbishop of *Canterbury*, concerning Prohibitions, was informed, That when Question was made of what matters the Ecclesiastical Judges have Cognizance, either upon the Exposition of the Statutes concerning Tythes, or any other Thing Ecclesiastical, or upon the Statute 1 *Eliz.* concerning the High Commission or in any other Case, in which there is not express Authority by Law, the King himself may decide it in his Royal person; and that the Judges are but the Delegates of the King, and that the King may take what Causes he shall please to determine from the determination of the Judges, and may determine them himself. And the Archbishop said, That this was clear in Divinity, That such Authority belongs to the King, by the Word of God in Scripture. "To which it was answered by me, in the presence, and with the clear consent of all the Justices of England, and Barons of the Exchequer, That the King in his own person cannot adjudge any Case, either Criminal, as Treason, Felony, &c. but this ought to be determined and adjusted in some Court of Justice, according to the Law and Custom of England. And always Judgments are given, *Ideo consideratum est per Curiam*, so that the Court gives the Judgment:— And it was greatly marvelled, That the Archbishop durst inform the King, that such absolute power and authority, as is aforesaid, belonged to the King, by the Word of God.

Give us a King to Judge us. 1 Sam. 8. 5. 6, 20.

## CHAP. III. Of Obedience.

## I.

N O Man has any more Civil Authority than what the Law of the Land has vested in him; Nor is he one of St. Paul's higher powers any farther, or to any other purposes than the Law has empower'd him.

## II.

An Usurped, Illegal and Arbitrary Power, is so far from being the Ordinance of God, that it is not the Ordinance of Man.

## III.

Whoever opposes an Usurped, Illegal, and Arbitrary Power, does not oppose the Ordinance of God, but the Violation of that Ordinance.

## IV.

The 13 of the *Romans* commands Subjection to our Temporal Governors, because their Office and Employment is for the publick welfare; For he is the Minister of God to Thee for good.

## V.

The 13 of the *Hebrews* commands Obedience to spiritual Rulers, because they watch for your souls.

## VI.

But the 13 of the *Hebrews* did not oblige the Martyrs and Confessors in Queen Mary's Time, to obey such blessed Bishops as Bonner and the Beast of Rome, who were the perfect Reverse of St. Paul's spiritual Rulers, and whose practice was murdering of Souls and Bodies, according to that true Character of Popery which was given it by the Bishops who compiled the Thanksgiving for the Fifth of November; but Archbishop Laud was wiser than they, and in his time blotted it out.

The Prayer formerly run thus: To that end strengthen the Hands of our Gracious King, the Nobles and Magistrates of the Land, to cut off these workers of Iniquity (whose Religion is Rebellion, whose Faith is Faction, whose practice is Murdering of Souls and Bodies) and to root them out of the Confiners of this Kingdom.

## VII.

All the Judges of England are bound by their Oath, and by the duty of their place, to disobey all Writs, Letters, or Commands, which are brought to them, either under the little Seal, or under the great Seal, to hinder or delay common Right. Are the Judges all bound in an Oath, and by their places, to break the 13 of the *Romans*?

## VIII.

The Engagement of the Lords attending upon the King at York, June 13. 1642. which was subscribed by the Lord Keeper, and Thirty Nine Peers, besides the Lord Chief-Justice Banks, and several others of the Privy-Council, was in these words:

We do engage our selves not to Obey any Orders or Commands whatsoever, not warranted by the known Laws of the Land. Was this likewise an Association against the 13 of the *Romans*?

18 Edw. 20 Edw. Cap. 1.



## IX.

A Constable represents the King's person, and in the Execution of his Office is within the purview of the 13 of the *Romans*, as all Men grant; but in case he so far pervert his Office, as to break the Peace, and commit Murther, Burglary, or Robbery on the Highway, he may, and ought to be Resisted.

## X.

The Law of the Land is the best Expofitor of the 13 of the *Romans*, Here, and in Poland, the Law of the Land There.

## XI.

The 13 of the *Romans* is received for Scripture in Poland, and yet this is expressed in the Coronation Oath in that Country; *Quod si Sacramentum meum violavero, Incola Regni nullam nobis Obedientiam prestare tenebuntur.* And if I shall violate my Oath, the Inhabitants of the Realm shall not be bound to yield me any Obedience.

## XII.

The Law of the Land, according to *Bracton*, is the highest of all the Higher Powers mentioned in this Text; for it is superior to the King, and made him King, (*Lit. iii. Cap. xxvi. Rex habet superiorem Deum, item Legem, per quam factus est Rex, item Curiam suam, viz. Comites & Barones*) and therefore by this Text we ought to be subject to it in the first place. And, according to *Melancthon*, It is the Ordinance of God, to which the Higher Powers themselves ought to be subject. Vol. iii. in his Commentary on the Fifth Verse, (*Wherefore ye must needs be subject, not only for Wrath, but also for Conscience sake.*) He has these words, *Neque vero hac tantum pertinent ad Subditos, sed etiam ad Magistratum, qui cum sunt Tyranni, non minus dissipant Ordinationem Dei, quam Seditiosi. Ideo & ipsorum Conscientia fit rea, quia non obediunt Ordinationi Dei, id est, Legibus, quibus debent parere. Ideo Comminationes hic posita etiam ad ipsos pertinent. Itaque hujus mandati severitas moveat omnes, ne violationem Politici status putent esse leve peccatum.* Neither doth this place concern Subjects only, but also the Magistrates themselves, who when they turn Tyrants, do no less overthrow the Ordinance of God than the Seditious; and therefore their Consciences too are guilty, for not obeying the Ordinance of God, that is, the Laws which they ought to obey: So that the Threatnings in this place do also belong to them; wherefore let the severity of this Command deter all men from thinking the Violation of the Political Constitution to be a light Sin.

*Corollary.* To destroy the Law and Legal Constitution, which is the Ordinance of God, by false and arbitrary Expositions of this Text, is a greater Sin than to destroy it by any other means; For it is *Seething the Kid in his Mothers milk.*

## CHAP. IV. Of Laws.

## I.

There is no Natural Obligation, whereby one Man is bound to yield Obedience to another, but what is founded in paternal or patriarchal Authority.

## II.

All the Subjects of a patriarchal Monarch are Princes of the Blood.

## III.

All the people of *England* are not Princes of the Blood.

## IV.

No Man who is Naturally Free can be Bound, but by his own Act and Deed.

## V.

Publick Laws are made by publick consent, and they therefore bind every man, because every Man's consent is involved in them.

## VI.

Nothing but the same Authority and Consent which made the Laws, can Repeal, Alter, or Explain them.

## VII.

To judge and determine Causes against Law, without Law, or where the Law is obscure and uncertain, is to assume Legislative power.

## VIII.

Power assumed, without a Man's consent, cannot bind him as his own Act and Deed.

## IX.

The Law of the Land is all of a piece, and the same Authority which made one Law, made all the rest, and intended to have them all impartially Executed.

## X.

Law on One Side, is the Back-Sword of Justice.

## XI.

The Best Things, when Corrupted, are the Worst; and the wild Justice of a State of Nature, is much more desirable than Law perverted, and over-ruled, into *Hemlock* and Oppression.

